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RECENT CASES

CHARITIES

NECESSITY OF A CHARITABLE PURPOSE TO ESTABLISH A CHARITABLE TRUST

The will of Mary Swayze contained the following clause: "I direct my executor to reduce sufficient of my estate to cash, such cash to be utilized for the erection and maintenance of a modern hotel at Virginia City, Montana, where no intoxicating liquors are to be sold at any time, said hotel to be maintained as a memorial to me, and I direct my executor to cause the formation of a corporation to be known as the Mary Swayze Memorial Hotel Company, to which corporation said hotel is to be conveyed, and by which it is to be maintained and operated." In a suit to determine heirship under the will the trial court held that the clause in question was void for uncertainty due to indefiniteness of the beneficiaries. On appeal the Supreme Court affirmed the judgment holding that the clause in question could not be deemed to be a trust for a charitable use in the absence of a charitable purpose on the part of the testatrix. *In re Swayze's Estate*, 191 P.2d 322 (Mont. 1948).

The problem before the Court in the present case was to determine whether there could be a valid charitable purpose in a will which provides for the formation of a corporation to erect and maintain a hotel in a community as a memorial to the testatrix when there is no provision as to the manner of distributing the profits.

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads."¹ Obviously the present case comes under the heading of benefit to the community. The test is whether the purpose is of a character sufficiently beneficial to the community to justify permitting property to be devoted forever to its accomplishment.

1. Lord Macnaghten in *The Commission For Special Purposes of the Income Tax v. Pemsel*, A.C. 531, 583 (1891); Restatement, "Trusts" §368 (1939).

In the present case the Court states that a trust is charitable if there is a direct tangible benefit to each member of the community.² In this way it justified previous decisions that held libraries,³ art museums,⁴ historical monuments,⁵ homes for the aged and indigent,⁶ and public utilities⁷ to be valid charitable trusts. The Court then went on to say that indirect benefit to the community is not the sole test of a charity,⁸ thus implying that something more must be shown before the trust will be considered charitable. This distinction is impracticable and should not be applied in this or any other case regarding charitable trusts.

If a bequest furthers the social interest of the community there is then a true benefit to the community.⁹ A public building, such as a town hall¹⁰ or theater¹¹ has been held to advance the social interest of a community. It is difficult to

2. "Certainly where there is a direct and tangible benefit to each member of the community the trust would be valid." In re Swayze's Estate, 191 P.2d 322, 326 (Mont. 1948). A bequest may directly benefit only a small class within the community, yet there is an indirect benefit to the entire community. See Quinn v. Peoples Trust and Savings Co., 223 Ind. 617, 60 N.E.2d 281 (1945); Sherman v. Shaw, 243 Mass. 257, 137 N.E. 374 (1922); In re Jackson's Estate, 175 Misc. 882, 25 N.Y.S.2d 102 (1940).
3. Crerar v. Williams, 145 Ill. 625, 34 N.E. 467 (1893).
4. In re Everson's Will, 268 App. Div. 425, 52 N.Y.S.2d 395 (1944).
5. Lawrence v. Prosser, 89 N.J.Eq. 248, 104 Atl. 772 (1918).
6. Burke Ex'r v. Crawfordsville Trust Co., 103 Ind. App. 1, 2 N.E.2d 817 (1936).
7. In Todd v. Citizens Gas Co. of Indianapolis, 46 F.2d 855 (C.C.A. 7th 1931), the defendant established a gas company by issuing stock certificates in the amount of \$2,000,000 which were to be held in trust by the trustees who in turn issued trust certificates to the holders of the stock. The charter provided that after the outstanding stock together with dividends of 10% per annum was paid the corporation was to cease existing and the plant was to revert to the city of Indianapolis. In an action to prevent reversion to the city the plaintiff contended that a public utility such as this could not be recognized in law as a charitable trust. The court held that it was a charitable trust, as it benefitted an indefinite number of persons. The erection of public buildings or works is a charitable purpose even though it is not called a charity in the gift itself. But cf. Doughton v. Vandever, 5 Del. Ch. 51 (1875).
8. "And if intangible benefit to individuals is to be the sole test then a trust for the establishment of a creamery or a canning factory or a pulp mill can also be considered charitable because of the indirect benefits that would inure to the residents as a result of the establishment of such industries." In re Swayze's Estate, 191 P.2d 322, 327 (Mont. 1948).
9. Restatement, "Trusts" §374 (1935).
10. Shannonhouse v. Wolfe, 191 N.C. 769, 133 S.E. 93 (1926).
11. Nixon v. Brown, 46 Nev. 439, 214 Pac. 524 (1923).

conceive that a hotel could be placed in the category of a public building, especially when a public building is defined as one that is ordinarily supported by taxes paid by the people of the community;¹² however, a hotel does advance the social interest and is thus a benefit to the community. A hotel is not less directly beneficial to the community in the form of public improvement than a bequest to a city for the erection of a gate to a public park¹³ or the erection of a granite tower with a carillon of eighteen bells.¹⁴ In other respects the community would be directly benefited by supplying employment to those who would participate in the erection of the hotel and also to those who would participate in the maintenance of the hotel. On the other hand, not every bequest to a community that would directly benefit an individual member of the community can be considered a charitable trust. If a bequest were made to a city, the income to be paid to each individual member of the community it would not be charitable because the social interest would not be advanced thereby.¹⁵ It can readily be seen that the test of directness of benefits is not valid in determining the existence of a charitable trust.¹⁶ Something more must be shown in order to make this trust of a charitable nature.

The testatrix did not use the word "charity" at any place in her will. Although this is not necessary when a charitable intent is shown by construing the entire will,¹⁷ yet it would have aided considerably in showing that the dominant purpose of the testatrix was charity rather than private benefit. The will as construed merely shows that the testatrix instructed her trustee to reduce enough of her estate to cash for the purpose of erecting a hotel in Virginia City as a memorial to her. A corporation was to be formed by the trustee for the purpose of maintaining the hotel. No restriction was placed on the corporation as to the distribution of net profits. It could apply the profits to a charitable purpose if it so

12. 3 Scott, "Trusts" §373 (1939).

13. *Haggin v. International Trust Co.*, 69 Colo. 135, 169 Pac. 138 (1917).

14. *In re Butin's Estate*, 183 P.2d 304 (Cal. 1947).

15. Restatement, "Trusts" §374 (1935).

16. Extensive research disclosed no previous case or authority that based a charitable trust on the test of directness of benefits.

17. *Todd v. Citizens Gas Co. of Indianapolis*, *supra*, n.7; *Dickinson v. City of Anna*, 310 Ill. 222, 141 N.E. 754 (1923).

desired. It could apply the profits to the benefit of its members or it could reinvest the profits which would create a private trust in the absence of a charitable purpose and violate the rule against perpetuities.¹⁸

In the present case the charitable purpose must be found in the gift of the hotel and not in the manner in which the profits are to be distributed. The Court excluded evidence offered by the defendant showing that Virginia City is a city of great historical significance in the State of Montana and a county seat, resulting in a large influx of visitors. The only hotel at Virginia City was destroyed by fire about ten years prior to the beginning of this action and was never replaced. Had this evidence been allowed it would have aided considerably in showing the extent of the public interest in a hotel at Virginia City, thus indicating a charitable purpose on the part of the testatrix. Once the charitable purpose of the testatrix was established the fact that the beneficiaries were indefinite would not have defeated the charitable trust, but on the contrary, would have aided in establishing the trust as a charitable bequest.¹⁹ The doctrine of *cy pres* could have been invoked as to the distribution of the net profits,²⁰

18. The cases are in conflict as to accumulations in a trust where a charitable purpose is shown. In *Porter v. Baynard*, 28 So.2d 890, (Fla. 1946) the testatrix left the residue of her estate in trust with one-half of the income to be devoted to specified charities and the other half to be reinvested with the principal in perpetuity. The court held the entire bequest void because the financial provisions of the fund and the bequests were inseparable. But cf. *Reasoner v. Herman*, 191 Ind. 642, 134 N.E. 276 (1922) where, on a similar fact situation the court upheld the entire bequest as valid stating that a court of equity could limit the accumulation so that it would not become a public menace. For an enlightening note on accumulations see 33 *Virginia Law Review* 529 (1947). In *Trust Co. of Georgia v. Williams*, 184 Ga. 706, 192 S.E. 913 (1937) testator made a bequest to be held in trust for the establishment of a hospital at which reasonable rates were to be charged as a memorial to him. The court held that the trust was a private one on the grounds that there would be uncontrolled direction by the trustee without any requirement that actual charitable work be done.
19. *Pratt v. Security Trust & Savings Bank*, 15 Cal. App. 2d 630, 59 P.2d 862 (1936); *Hulet v. Crawfordsville Trust Co.*, 69 N.E.2d 823 (Ind. App. 1946); *Clevenger v. Rio Farms*, 204 S.W.2d 40 (Tex. 1947).
20. *Quinn v. Peoples Trust & Savings Co.*, 223 Ind. 617, 60 N.E.2d 281 (1945). Testatrix left the residue of her estate in trust with the income to be used to educate the children of the employees of the Pennsylvania Railroad. Only one person at a time was to receive the benefit of the bequest which was not to exceed \$800 per year for a four year period. It so happened that the income from the estate would far exceed this figure and the court held

and the memorial would have been considered only incidental to the main purpose of the testatrix.²¹ The majority opinion disregarded this evidence stating: "We cannot say that these purposes would warrant the setting aside of such a salutary rule as the rule against restraint of alienation, nor can we justifiably say that it would warrant the creation of a tax-free corporation to compete in the identical business with private corporations or private hotel owners."²²

In arriving at its decision the Court was greatly influenced by an alleged public policy which disapproves of tax-exempt corporations competing with privately-owned corporations in the same line of business. This may be true as a general rule, but it is not a tenable legal argument on which to base a decision in the absence of legislative enactment.²³ On the other hand courts have used the public policy argument as one that urges them to construe bequests as charitable whenever they can.²⁴ Thus when the court enters the realm of public policy, as an argument for or against the construction of trusts as charitable, there are two opposing forces, the one equally balancing the other. The problem of tax free corporations competing with private corporations is not presented here as there is no other hotel in Virginia City. No doubt the public policy to which the Court refers would be more applicable in a city with competing hotels; however, even in such a case a charitable trust would not be invalidated where a charitable purpose is shown simply because it competes. Since a charitable corporation may own property subject to

that the doctrine of *cy pres* was in effect in Indiana and that as long as a charitable purpose was shown the trustee could select an increased number of children until the yearly income was exhausted.

21. Under common law a bequest for the upkeep of testator's burial plot was held to be a private purpose thus violating the rule against perpetuities. *Heinlein v. Elyria Savings & Trust Co.*, 75 Ohio App. 353, 62 N.E.2d 284 (1945). To remedy this, Indiana and many other states have passed statutes upholding this type of bequest. Ind. Stat. Ann. (Burns, 1933) §21-212.
22. *In re Swayze's Estate*, 191 P.2d 322, 327 (Mont. 1948).
23. *Arkansas Louisiana Gas Co. v. Hardin*, 206 Ark. 593, 176 S.W.2d 903 (1944); *Spencer v. City of Alhambra*, 44 Cal. App. 2d 75, 111 P.2d 910 (1941); *Park Construction Co. v. Independent School District No. 32, Carver County*, 209 Minn. 182, 296 N.W. 475 (1941); *Baptist Memorial Hospital v. Couillens*, 176 Tenn. 300, 140 S.W.2d 1088 (1940).
24. *In re Lowe's Estate*, 70 N.E.2d 187 (Ind. 1946); *Scobey v. Beckman*, 111 Ind. App. 574, 41 N.E.2d 847 (1942); *Moskowitz v. Federman*, 72 Ohio App. 149, 51 N.E.2d 48 (1943).

the same taxes as privately owned corporations when that property is not used for strictly charitable purposes,²⁵ the argument used by the Montana court loses much of its validity.

CONSTITUTIONAL LAW

DENIAL OF DUE PROCESS BY USE OF COERCED CONFESSIONS

After conviction of murder in the first degree for the killing of a police officer, appellant brought error, charging that the confession used against him at the trial had been obtained through coercion and violence and had been incorrectly admitted as evidence by the trial court. The undisputed evidence showed that appellant had been captured soon after the killing and had been severely beaten by the police who had arrested him. After the beating he was taken to police headquarters where he was questioned that night in the presence of several of the officers who had beaten him. The confession in controversy followed. At the time appellant made his confession he had neither been advised of his rights nor seen his counsel. In reversing the conviction the Indiana Supreme Court held that the circumstances warranted a finding by the court that the confession had been obtained through coercion and was therefore inadmissible as evidence. *Johnson v. State*, 78 N.E.2d 158 (Ind. 1948).

The problem confronting the court was one of determining whether the circumstances under which the confession was secured constituted a denial of due process of law as guaranteed by the Fourteenth Amendment.¹ By reviewing the means by which this confession was obtained, the court departed from the precedent set forth by previous Indiana cases which had stated the proposition that the circumstances attendant upon the securing of a criminal confession are issues of fact for determination by the trial court only, and that the findings so made should not be disturbed by appellate courts.² The position expressed by the Supreme Court of the

25. *City Temple Institutional Society of Denver v. McGuire*, 104 Colo. 11, 87 P.2d 760 (1939); *Boston Symphony Orchestra v. Board of Assessors*, 294 Mass. 248, 1 N.E.2d 6 (1936).

1. For the most comprehensive treatment of the subject generally see McCormick, "Some Problems and Developments in the Admissibility of Confessions" 24 Tex. L. Rev. 239 (1946).
2. "This court will not weigh the evidence given in the trial court upon the competency of the admission in evidence of a written